

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID NATHANIEL ROBINSON,

Defendant-Appellant.

UNPUBLISHED

May 2, 1997

No. 191857

Wayne Circuit Court

LC No. 95-003703-FH

Before: Sawyer, P.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of voluntary manslaughter, MCL 750.321; MSA 28.553, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was originally charged with murder in the first degree, MCL 750.316; MSA 28.548, two counts of armed robbery, MCL 750.529; MSA 28.797, felony-firearm, MCL 750.227b; MSA 28.424(2), and three counts of assault with intent to murder, MCL 750.83; MSA 28.278. Defendant was sentenced to a mandatory two-year term in prison on the felony-firearm conviction, which was to be followed by an eight- to fifteen-year sentence on the voluntary manslaughter conviction. We affirm.

Defendant first argues on appeal that insufficient evidence was presented to sustain his voluntary manslaughter and felony-firearm convictions. We disagree. In determining whether sufficient evidence has been presented to sustain a conviction, the Court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515-516 n 6; 489 NW2d 748 (1992).

Voluntary manslaughter requires that: (1) the defendant must kill in the heat of passion, (2) the passion must be caused by an adequate provocation, and (3) there cannot be a lapse of time during which a reasonable person could control his passions. *People v Pouncey*, 437 Mich 382, 388; 471 NW2d 346 (1991). An essential element of the crime of voluntary manslaughter is the intent to kill or commit serious bodily harm. *People v Delaughter*, 124 Mich App 356, 360; 335 NW2d 37 (1983).

Because provocation is not an element of voluntary manslaughter, it need not be proven by the prosecution beyond a reasonable doubt. Therefore, though there need not be proof beyond a reasonable doubt of provocation, there must be some “slight but sufficient” evidence in order for the instruction on voluntary manslaughter to be given. *People v Moore*, 189 Mich App 315, 320; 472 NW2d 1 (1991).

Viewing the evidence in a light most favorable to the prosecution, we conclude that the prosecution presented sufficient evidence of a killing done in the heat of passion, caused by adequate provocation, without a sufficient lapse of time during which a reasonable person could control their passions. “Slight but sufficient” evidence was presented by the prosecution to establish the element of provocation. *Moore, supra*.

Defendant attempted to speak with Deon regarding the conflict between the girls. Only after Deon turned to Felicia and said, “Give me that gun” did defendant shoot Deon. Defendant was afraid that Deon would shoot him because Deon was acting aggressively. Defendant saw Deon continue to walk towards him with the shotgun after defendant had originally fired at him, so defendant fired again at Deon. Defendant testified that Deon lunged forward, reached out, grabbed defendant, and bit defendant on the left side of defendant’s chest. Defendant immediately shot Deon after hearing him say, “Give me the gun,” which demonstrated that a reasonable time had not yet passed for defendant’s blood to cool. The firing of the gun four times into Deon’s body at close range was sufficient evidence of defendant’s intent to kill or commit great serious harm to Deon.

Sufficient evidence was also presented by the prosecution to support defendant’s felony-firearm conviction. It is undisputed that defendant shot Deon with a nine millimeter gun four times in the chest and abdominal area. Since a conviction under the felony-firearm statute requires proof that the defendant carried or possessed a firearm during the commission or attempted commission of a felony, MCL 750.227b; MSA 28.424(2), and the evidence presented was sufficient to prove that defendant shot Deon, we conclude that a rational trier of fact could find beyond a reasonable doubt that defendant possessed a firearm during the commission of a felony.

Defendant next argues that the trial court erred in denying his motion for a directed verdict as to the first-degree murder charge. We disagree. In determining whether the prosecution has introduced sufficient evidence to avoid a directed verdict, this Court must consider all of the evidence presented up to the time the motion is made, view that evidence in the light most favorable to the prosecution, and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979), cert den 449 US 885; 101 S Ct 239; 66 L Ed 2d 110 (1980).

In order to convict a defendant of first-degree murder, the prosecution must prove that the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate. *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995). Premeditation and deliberation require sufficient time to allow the defendant to take a second look. The elements of premeditation and deliberation may be inferred from the circumstances surrounding the killing.

Premeditation may be established through evidence of the following factors: (1) the prior relationship of the parties; (2) the defendant's actions before the killing; (3) the circumstances of the killing itself; and (4) the defendant's conduct after the homicide. *Id.*

Viewing the evidence presented up to the time the motion was made, in a light most favorable to the prosecution, we hold that a rational trier of fact could find that the prosecution presented evidence beyond a reasonable doubt to support a conviction for first-degree murder. As the discussion between defendant and Deon regarding the girls was ongoing, defendant shot Deon. Felicia saw defendant point his gun and fire more shots at Deon while Deon was laying on the ground after defendant had initially shot Deon. This evidence suggests that defendant had sufficient time to take a second look before he shot Deon. *Anderson, supra*. Although there was no prior relationship between defendant and Deon, the fact that defendant shot Deon at close range four times, and shot him while he was laying on the ground after being shot the first time, reflected premeditation and deliberation on defendant's part. *Id.*

Finally, defendant claims that the trial court's sentence was disproportionate. We disagree. Defendant's eight-year minimum sentence was within the guidelines minimum sentence range of three to eight years. Therefore, it is presumed proportionate unless unusual circumstances exist. *People v Milbourn*, 435 Mich 630, 661; 461 NW2d 1 (1990).

Defense counsel failed to raise any unusual circumstances that would render the sentence disproportionate. Defendant's crime was very serious as it involved the taking of a life, and the evidence demonstrated that defendant shot Deon four times at close range. Deon did not shoot at defendant or even fire the shotgun before he was gunned down. Defendant has an extensive juvenile criminal record involving guns and, although he has ties to Michigan, he was living in Las Vegas, Nevada, at the time of the killing and was only in Detroit visiting. Because defendant has failed to overcome the presumptive proportionality of his sentence, we conclude that the court did not abuse its sentencing discretion.

Affirmed.

/s/ David H. Sawyer
/s/ William B. Murphy
/s/ Mark J. Cavanagh